THE HONOURABLE SRI JUSTICE R. SUBHASH REDDY

WRIT PETITION NO. 9250 OF 2005

DATED: 20-04-2006

Between

S.Mohan Reddy …..Petitioner

And

The Union of India, rep. by Director General,

BSNL, Corporate Office, New Delhi and ors.

…Respondents.

THE HONOURABLE SRI JUSTICE R. SUBHASH REDDY

WRIT PETITION No. 9250 OF 2005:

ORDER:

As much as counter affidavit is filed on behalf of the respondents, with the consent of learned Counsel appearing on either side, this Writ Petition is disposed of at the admission stage.

This Writ Petition is filed seeking Writ of Mandamus, to declare the action of the first respondent in rejecting the claim of the petitioner for grant of temporary status of Group-D to him vide order dated 21-12-2004 in proceedings No.TA/LC/12-153/2004 as arbitrary, discriminatory and illegal, and, for consequential direction to the respondents to grant temporary status of Group-D to him.

The petitioner was initially engaged as Casual Mazdoor in the office of the Sub-Divisional Engineer of the Bharat Sanchar Nigam Limited, a Government of India company, at Tirupathi, for the installation works. By maintaining muster rolls, monthly payments were being paid to him having regard to number of days worked. As stated in the affidavit filed in support of the Writ Petition, it is the case of the petitioner, that right from 1987 onwards, he was engaged for maximum number of days in every year as Casual Mazdoor in installation works wing and entries with regard to number of days worked is evident from the days book maintained by the respondents. Earlier, when the case of the petitioner was not considered by extending the benefit of temporary status as per the 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of the Department of Telecommunications, 1989', he approached this Court by filing Writ Petition No.13728 of 2004. It was the case of the petitioner in the said writ petition that though he was entitle to the benefit under the Casual Labourers (Grant of Temporary Status and Regularization) Scheme for grant of temporary status, but however, inspite of recommendations of the third respondent, such benefit was not extended to him. This Court by order dated 05-08-2004 passed in Writ Petition No. 13728 of 2004, directed the respondents to pass appropriate orders on the representation of the petitioner. Consequent to the directions issued by this Court, impugned order dated 21-12-2004 was communicated to the petitioner, rejecting his claim on the ground that the petitioner has not fulfilled the conditions for conferring temporary status as he was not engaged as casual labourer as on 1-8-1998, and he did not work continuously for a period of 240 days in the preceding one year, prior to 1-9-1998.

In this writ petition, it is the case of the petitioner, that there are records maintained by the office of the Sub Divisional Engineer, Tirupathi and as per the particulars mentioned in the said records, he has fulfilled all the conditions for grant of temporary status and for one reason or the order, he is being denied the temporary status, which benefit was extended to similarly placed persons.

On the other hand, counter affidavit is filed on behalf of the Assistant General

Manager (Legal) stating that Union of India is not a necessary party to this Writ Petition as much as after formation of Bharat Sanchar Nigam Limited, i.e. on 1.10.2000, telecommunication services have been transferred to the said company. It is further stated that the case of the petitioner was considered in view of the direction issued by this Court in the earlier Writ Petition, with reference to available records, and, as much as he was not engaged as casual labourer as on 1-8-1998, his claim was rejected. It is also stated that in view of factual disputes, the writ petitioner is not entitle to claim any benefit in the petition under Article 226 of the Constitution of India.

Heard the learned Counsel for the petitioner and Sri R.S. Murthy, learned Standing Counsel appearing for the respondents, at length.

Bharat Sanchar Nigam Limited has framed the 'Casual Labourers (Grant of Temporary Status and Regularization) Scheme of the Department of Telecommunications, 1989, on 7.11.1989 to benefit the casual labourers who were employed by the department of Telecommunications. The said scheme came into force with effect from 1-10-1989. As per the said scheme, till regular Grade-D vacancies are available to absorb all the casual labourers to whom this scheme is applicable, the casual labourers would be conferred with the temporary status. As per the terms of the scheme, the casual labourers, who had been engaged for a period of 240 days in a year and who were on rolls as on the date of scheme, are entitle to the benefit of the scheme. Clause 5 (i)(ii)(iii) and (iv) of the Casual Labourers (Grant of Temporary Status and Regularization) Scheme reads as follows

"5. Temporary Status:

i. Temporary status would be conferred on all the casual labourers currently employed and who have rendered a continuous service of at least one year, out of which they must have been engaged on work for a period of 240 days (206 days in the case of offices observing five day week). Such casual labourers will be designated as 'Temporary Mazdoor'.

ii. Such conferment of temporary status would be without reference to the creation/availability of regular Gr.D posts.

iii. Conferment of temporary status on a casual labourer would not involve any change in his duties and responsibilities. The engagement will be on daily rates of pay on a need basis. He may be deployed any where within the recruitment unit/territorial circles on the basis of availability of work.

iv. Such casual labourers who acquire temporary status will not however be brought on to the permanent establishment unless they are selected through regular selection process for Gr.D. posts."

The benefit of the said scheme has been extended by issuing various orders from time to time. As per the letter dated 12.2.1999, while giving instructions to the effect that no casual labourers to be engaged thereafter, extended the benefit of temporary status to all the casual labourers who were on rolls as on 1-8-1998. It is the case of the petitioner that right from 1987 onwards, he has been attending to the installation works in the Sub-Divisional Engineer office, Tirupathi and the Sub Divisional Engineer has addressed a letter furnishing particulars of all casual labourers with number of man-days worked from time to time. So far as petitioner is concerned, he was shown in the list of casual labourers, who were not granted temporary status working in the office of the Sub-Divisional Engineer. It is evident from the particulars furnished by the Sub Divisional Engineer that the petitioner was engaged as casual labourer on 1.1.1987 and that he worked right from 1987 to 1995. During 1988-89, he worked for 346 days, and in the remarks column, it is stated that the candidate is a skilled person and is in installation from 1-1-1987. In the list of casual labourers furnished by the Divisional Engineer, Office of the General Manager, Telecom, Tirupathi, particulars of candidates engaged as casual labourers as on 1-8-1998 were shown and even in the said list, the name of the petitioner is shown at Serial No.20 and his date of joining is shown as 1-1-1987. With reference to the said proceedings and lists which are filed in the material papers, the only answer from the learned Standing Counsel for the respondent organization is that case of the petitioner is considered with reference to the available records. But, however, he fairly submitted that all the records are not available. At the same time, the petitioner has not disputed the authenticity of the particulars furnished by the Divisional Engineer, Tirupathi. It is also not in dispute that the petitioner was initially engaged in the year 1987 and he has been continuously engaged for maximum number of days in every year. Even during 1988-89, he worked for 340 days and he was on

rolls as on the date when initially the scheme was introduced on 7-11-1989. The correspondence and representation made by the petitioner indicate that right from beginning, his case has been forwarded by the various authorities to extend the benefit of the scheme, which was extended to similarly placed casual labourers employed in the Department of Telecommunications. Even as per the scheme, by granting temporary status, he will not be brought under the permanent establishment unless he is selected through regular selection process for Grade-D posts from the casual labourers who acquired temporary status. Even the reasoning assigned in the impugned proceedings that the petitioner did not work continuously for 240 days in the preceding one year, prior to 1998, cannot be accepted for the reason that, the services of the petitioners, as stated by him, are being utilized by immediate appointing contractors. As per the list furnished by the Sub Divisional Engineer, it shows that the petitioner was on rolls from 1-1-1987 and in any event, even as per the said scheme, he has fulfilled all the requirements by working 240 days in every year and he was on rolls as casual labourer, when the scheme came into force on 1-10-1989. In that view of the mater, there is no reason at all to reject the claim of the petitioner for grant of temporary status. When the authenticity of the proceedings issued by the Sub Divisional Engineer and the lists submitted by the said officer are not in dispute, merely because records are not available in the office of the General Manager, is not a ground to reject the claim of the petitioner.

Though it is submitted by the learned counsel appearing for the petitioner that the petitioner is entitle to the benefit of the scheme retrospectively, but the said relief cannot be granted as it affects to other employees who were already included in the list of temporary status and as much as they are are not before this Court.

For the foregoing reasons, the impugned proceedings No. No.TA/LC/12-153/2004, dated 21-12-2004 are set aside. The Writ petition is allowed and the respondents 2 to 5 are directed to extend the benefit of temporary status to the petitioner as per the provisions of the Casual Labourers (Grant of Temporary Status and Regularization) Scheme of the Department of Telecommunications, 1989, as was extended to the similarly placed persons.

The Writ Petition is allowed to the extent indicated above. No order as to costs.

JUSTICE R. SUBHASH REDDY

DATED: --- April, 2005.

Msnr.